Supreme Court, U.S.
FILED
OCT 4 1977
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-387

RICHARD B. WILLIAMS and PEARL JOHNSON,

Petitioners,

vs.

CITY OF CHICAGO, etc., et al.,

Respondents.

PATRICK E. GORMAN and DOROTHY GORMAN, et al.,

Petitioners,

vs.

CITY OF CHICAGO, etc., et al.,

Respondents.

BRIEF FOR RESPONDENT IN OPPOSITION

WILLIAM R. QUINLAN,
Corporation Counsel of the City of Chicago,
511 City Hall, Chicago, Illinois 60602,
Attorney for Respondents.

DANIEL PASCALE,
RICHARD F. FRIEDMAN,
Assistant Corporation Counsel,
Of Counsel.

Midwest Law Printing Co., Chicago 60601, Financial 6-3988

IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No.

RICHARD B. WILLIAMS and PEARL JOHNSON,

Petitioners,

VS.

CITY OF CHICAGO, etc., et al.,

Respondents.

PATRICK E. GORMAN and DOROTHY GORMAN, et al.,

Petitioners,

VS.

CITY OF CHICAGO, etc., et al.,

Respondents.

BRIEF FOR RESPONDENT IN OPPOSITION

REASONS FOR DENYING THE WRIT

Summary

The petitioners fail to state why this case is appropriate for the granting of certiorari. Pursuant to Rule 19 of this court, petitioners must show that the state court decided "a federal question of substance not theretofore determined" by the Supreme Court or that

the state court decided a federal question "probably not in accord with the applicable decisions" of the Supreme Court. The petitioners do not attempt to rely on the first ground since it is obvious that the question of the limits of classification for local taxation purposes is not novel, having been before this court on many prior occasions. The cases cited in the petitioners' brief, such as *Lehnhausen v. Lake Shore Auto Parts Co.*, 410 U.S. 356, 364 (1973); and *Madden v. Kentucky*, 309 U.S. 83 (1940), demonstrate that this is true.

Rather, the petitioners argue that the judgment of the Illinois Supreme Court is contrary to prior decisions of this court. However, it is obvious at the outset that the Illinois Supreme Court based its decision on established principles articulated by this court in its numerous decisions applying the Equal Protection Clause to local taxation. In particular, the Illinois Supreme Court followed and cited *Lehnhausen v. Lake Shore Auto Parts Co.*

Not only did the Illinois Supreme Court state the appropriate standards, its judgment correctly applied those standards. The City of Chicago transaction tax ordinance taxed the lease of some, but not all conceivable kinds of personal property. The Illinois Supreme Court recognized the discretion reposed in local legislative bodies to impose taxes one step at a time, or to exempt items of property for administrative convenience or to advance other legislative policies. See opinion of the Illinois Supreme Court, Petition 10-11.

Similarly, the Illinois Supreme Court was correct in its judgment that the lower tax rate accorded nonresidents of the City of Chicago did not violate equal protection. It found that the distinction bore a reasonable relationship to the objective of the tax, and that the

distinction created by the City Council of the City of Chicago achieved a valid legislative goal. Although the petitioners argue strenuously in their brief (Petition 10-11) that the resident-non-resident distinction would not achieve these goals effectively, that argument is merely addressed to the wisdom of the legislative classification, not its validity. Neither this court nor the Illinois Supreme Court sits to review the wisdom of local legislative enactments.

I.

THE ILLINOIS SUPREME COURT RECOGNIZED AND PROPERLY APPLIED GOVERNING DECISIONS OF THIS COURT.

The petitioners state (Petition 7-8) the governing principles by which tax classifications are judged to be in compliance with the Equal Protection Clause. The respondents are in full agreement with petitioners' statement of those standards. And the Illinois Supreme Court opinion makes it clear that it, too, reached its decision applying the same standards.

For example, the petitioners correctly state the burden borne by persons challenging plans of local taxation is a "heavy burden." Petition 8. This is the same standard applied by the Illinois Supreme Court, which stated that "one who attacks [the legislative classification] has the burden of proving such classifications to be arbitrary and unreasonable." Petition 8a. The petitioners cite *Lehnhausen v. Lake Shore Auto Parts Co.* as establishing the criteria by which to judge the validity of legislative classifications, and the Illinois Supreme Court cited the same case. *Ibid.* In addition, the petitioners cite *Wheeling Steel Corp. v. Glander*, 337 U.S. 562 (1949) for the uncontested proposition that the legislative classification must have some relationship to

the object of the legislation. But this is precisely the standard articulated in the opinion of the Illinois Supreme Court, which stated "the classification must bear some reasonable relationship to the object of the legislation." *Ibid.* And in judging whether the classification met that standard, the Illinois Supreme Court stated, "We . . . do not concur with the argument that the definition contained in subsection 5 is somehow contrary to the intent and object of the tax. . . ." Petition 10a.

The petitioner states that the classification must be "palpably arbitrary or invidious" in order to be found to violate the Equal Protection Clause. But this was the standard, in almost the identical language, applied by the Illinois Supreme Court. It stated, "Furthermore, we are of the opinion that neither of the provisions of the ordinance . . . are otherwise patently arbitrary or unreasonable." Petition 10a.

There can be no doubt, therefore, that the Illinois Supreme Court clearly understood the standards which this court has held must be applied in judging legislative classification for tax purposes.

II.

THE ILLINOIS SUPREME COURT PROPERLY FOUND CONSTITUTIONAL THE CLASSIFICATION OF KINDS OF PROPERTY TAXED.

The petitioners challenge the correctness of the Illinois Supreme Court's judgment that the City of Chicago could properly tax the lease of specified kinds of personal property while allowing the lease of other personal property to be untaxed. (This issue is applicable only to *Williams v. City of Chicago.*) However, such classifications are presumed to be valid and there is a burden

upon the person attacking the legislation "to negative every conceivable basis which might support it." *Allied Stores of Ohio v. Bowers*, 358 U.S. 522 (1959); *Madden v. Kentucky*, 309 U.S. 83 (1940); *Lehnhausen v. Lake Shore Auto Parts Co.*, 410 U.S. 356, 364 (1973). The petitioners, however, entirely failed to sustain this burden. *Williams* was decided upon motion to dismiss and an interlocutory appeal to the Illinois Appellate Court upon questions certified by the trial court. (Rule 308 of the Rules of the Illinois Supreme Court permits such appeals of otherwise non-final orders.) The petitioners' sole attempt to "negative every conceivable basis which might support" the tax ordinance appeared in the complaint, which contained only conclusory allegations alleging the unconstitutionality of the ordinance. This was insufficient to sustain the burden. As the Illinois Supreme Court noted (Petition 11a), "in our opinion the complaints in both cases failed to allege a sufficient factual basis to overcome the presumptive constitutionality of the ordinance."

Not only did the petitioners fail to sustain their burden, but judged on the merits, the legislative classification was consistent with the Equal Protection Clause. The Fourteenth Amendment does not require a rigid scheme of literal equality; legislatures are permitted to attack problems one step at a time and are not required to address all evils or correct all problems at once. *Williams v. Lee Optical of Oklahoma*, 348 U.S. 483 (1955). The Illinois Supreme Court, in addition, described and analyzed these valid legislative goals which supported the legislative decision to tax the lease of some property, but not other property. Petition 11a. For all these reasons, the Illinois Supreme Court was correct in its holding that the City Council of the City of Chicago might validly enact the classification in question.

III.

THE ILLINOIS SUPREME COURT WAS CORRECT IN HOLDING THAT RESIDENT-NON-RESIDENT DISTINCTION IS CONSISTENT WITH THE CONSTITUTION.

As with the classification of kinds of personal property transactions taxed, the petitioners failed to sustain their burden of showing the unconstitutionality of taxing transactions involving non-residents of Chicago at a lower rate than that paid by residents of the City. (This issue is raised in both *Gorman v. City of Chicago* and *Williams v. City of Chicago.*) Like *Williams*, no evidence was introduced in *Gorman*. It was decided in the trial court on a judgment on the pleadings; no facts of any substance were introduced outside of the complaint. The complaint, itself, was virtually identical to the complaint in *Williams v. City of Chicago*. In conclusory language, it alleged the unconstitutionality of the resident-non-resident distinction. As noted, the Illinois Supreme Court found that the complaints in both of these cases did not contain sufficient factual allegations to overcome the presumption of constitutionality. Petition 11a.

The thrust of petitioners' argument is that the residency distinction bears no relationship to the objective of the tax. They claim that a "transaction" is taxed, and the residency of the parties is irrelevant to the transaction. But this ignores the express words of the taxation ordinance, which provides that the burden of paying the tax rests upon the lessee (in transactions involving the transfer of personal property) or the purchaser (in transactions involving the transfer of real property). Municipal Code of Chicago, Illinois, Sections 200.1-2A(2), 200.1-2B(2), Petition 21a, 23a. The residency of such persons bears a very real relationship to the objective of the tax. Offering a lower tax to non-residents

recognizes that since they do not live within the limits of the City of Chicago, they have lesser need of city services. The petitioners are correct in stating that the "transaction" remains the same regardless of the residency of the parties to it. But the lower tax recognizes that city services are provided not to intangible "transactions" but to individuals—the persons upon whom the burden of paying the tax is laid.

The Illinois Supreme Court also discusses other reasons supporting the residency tax rate distinction. Since non-residents have less contact with city agencies, a lower rate may encourage the payment of tax which otherwise may be easy to evade. It also encourages persons from outlying areas to do business with Chicago businesses. In City of Chicago transactions, non-residents, by paying a lower tax rate, have a slight advantage over City of Chicago residents.

It should be noted that this court has previously upheld a differential tax rate distinguishing between residents and non-residents. *Madden v. Kentucky*, 309 U.S. 83 (1940). The petitioners fail to cite a single case in which this court has stricken down a tax offering an advantageous rate to non-residents.

CONCLUSION

No novel federal issues are involved in this case. The Illinois Supreme Court applied recognized standards in the proper manner in reaching its decision. For these reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

WILLIAM R. QUINLAN,
Corporation Counsel of the City of Chicago,
511 City Hall, Chicago, Illinois 60602,
Attorney for Respondents.

DANIEL PASCALE,
RICHARD F. FRIEDMAN,
Assistant Corporation Counsel,
Of Counsel.

October 3, 1977